

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

INVESTMENT RETRIEVERS, INC.,

Plaintiff,

VS.

JESUS BERRIOS individually and dba
INTERNATIONAL GENETRACE, INC.,

Defendant.

Case No: C 10-1168 SBA

ORDER REMANDING ACTION

Plaintiff, Investment Retrievers, Inc., filed the instant debt collection action against defendant, Jesus Berrios, in San Mateo County Superior Court on August 17, 2009. In its complaint, Plaintiff alleges that Defendant defaulted on his credit card payments, and owes a principal balance of \$2,625.82, and \$656.45 in interest. The Judicial Council form complaint alleges state law causes of action for breach of contract and common counts. No federal claims are alleged. On March 19, 2010, Defendant, acting pro se, filed a Notice of Removal. Though not entirely clear, Defendant appears to predicate the removal on diversity jurisdiction and on the ground that Plaintiff's causes of action sound in admiralty law. (Notice of Removal at 1.) He also purports to allege federal counterclaims, presumably as another basis for the removal. (Id. at 9-10.)

The federal removal statute permits the removal from state court to federal court of cases that might have been filed in federal court originally. See 28 U.S.C. § 1441(a). Under section 1441(b), an action may be removed if the complaint alleges “a claim or right arising under the Constitution, treaties or laws of the United States” Alternatively, an action may be removed only “if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b). A district court has

1 “a duty to establish subject matter jurisdiction over the removed action sua sponte, whether the
 2 parties raised the issue or not.” United Investors Life Ins. Co. v. Waddell & Reed, Inc., 360
 3 F.3d 960, 967 (9th Cir. 2004). A district court must remand a case to state court “if at any time
 4 before the final judgment it appears that the district court lacks subject matter jurisdiction.” 28
 5 U.S.C. § 1447(c); Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). “The burden of
 6 establishing federal jurisdiction is on the party seeking removal, and the removal statute is
 7 strictly construed against removal jurisdiction.” Prize Frize Inc. v. Matrix Inc., 167 F.3d 1261,
 8 1265 (9th Cir.1999).

9 The Court has carefully reviewed the Notice of Removal and attachments thereto, and
 10 has concluded that removal jurisdiction is absent. The diversity jurisdiction statute confers
 11 jurisdiction in cases where the parties are citizens of different states and where the amount in
 12 controversy exceeds the sum of \$75,000. 28 U.S.C. § 1332. Here, the amount in controversy
 13 is approximately \$3,300, which is well below the jurisdictional minimum. In addition, Plaintiff
 14 filed its complaint as a limited jurisdiction action, meaning that the amount recoverable
 15 pursuant to the complaint cannot exceed \$10,000. Based on the record presented, it is plain
 16 that diversity jurisdiction is absent.

17 Defendant’s Notice of Removal also makes a passing reference to “Admiralty” law,
 18 presumably in an attempt to establish that Plaintiff’s collection claims arise under federal law.
 19 See 28 U.S.C. § 1333 (“The district courts shall have original jurisdiction, exclusive of the
 20 courts of the States, of: [¶] (1) Any civil case of admiralty or maritime jurisdiction, saving to
 21 suitors in all cases all other remedies to which they are otherwise entitled.”). In determining
 22 the boundaries of admiralty jurisdiction, the court looks to the purpose of the Congressional
 23 grant. Exxon Corp. v. Central Gulf Lines, Inc., 500 U.S. 603, 608 (1991). The fundamental
 24 interest giving rise to maritime jurisdiction is “the protection of maritime commerce.” Id.
 25 (internal quotations and citations omitted); see also Ventura Packers, Inc. v. F/V Jeanine
 26 Kathleen, 305 F.3d 913, 917 (9th Cir. 2002) (“Though not confined to vessels, admiralty
 27 naturally centers around them, as the great agents of maritime affairs.”). This case, however,
 28

1 does not involve maritime commerce or affairs; it merely involves the collection of a credit
 2 card debt.¹

3 Defendant also seems to posit that the action is removable based on his purported
 4 counterclaims based on federal law. Specifically, attached to the Notice of Removal are
 5 counterclaims which allege that Plaintiff violated the Fair Debt Collection Practices Act and
 6 the Privacy Act in the course of attempting to collect the underlying debt. Notice of Removal
 7 at 9-10. However, it is well settled that a complaint that is based entirely on state law is not
 8 removable by virtue of anticipated federal defenses or counterclaims. See Louisville &
 9 Nashville R.R. Co., v. Motley, 211 U.S. 149, 152 (1908) (holding that an anticipated defense
 10 may not be used to establish subject matter jurisdiction); Takeda v. Northwestern Nat'l Life
 11 Ins. Co., 765 F.2d 815, 821 (9th Cir. 1985) ("[R]emovability cannot be created by defendant
 12 pleading a counterclaim presenting a federal question.") (citations omitted); accord Schwarzer,
 13 Tashima & Wagstaffe, Federal Civ. P. Before Trial, § 1.121 at 2B-50 (TRG 2008). Since
 14 Plaintiff's complaint sounds only in state law and there is no basis for diversity jurisdiction, the
 15 Court finds that the action is not removable. Accordingly,

16 IT IS HEREBY ORDERED THAT, pursuant to 28 U.S.C. § 1447(c), the instant action
 17 is REMANDED to the San Mateo County Superior Court. The Clerk shall close the file and
 18 terminate all pending matters.

19 IT IS SO ORDERED.

20 Dated: 6/1/10


 21 SAUNDRA BROWN ARMSTRONG
 22 United States District Judge

23
 24
 25 UNITED STATES DISTRICT COURT

26
 27 ¹ Even if the saving to suitors clause set forth in 28 U.S.C. § 1333 were germane,
 28 Defendant still would need to demonstrate an independent basis of subject matter jurisdiction
 in order to remove the action, which he has failed to do. See Tennessee Gas Pipeline v.
Houston Cas. Ins. Co., 87 F.3d 150, 153 (5th Cir. 1996).

1 FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA

3 INVESTMENT RETRIEVERS, INC et al,

4 Plaintiff,

5 v.

6 BERRIOS et al,

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8
9 Case Number: CV10-01168 SBA

10 **CERTIFICATE OF SERVICE**

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on June 2, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
16 located in the Clerk's office.

17 Jesus Berrios
18 20 Nancy Lane
19 Daly City, CA 94014

20 Dated: June 2, 2010

21 Richard W. Wiking, Clerk

22 By: LISA R CLARK, Deputy Clerk